IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY THIRD DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI DEVINDER GUPTA, THE CHIEF JUSTICE

and
THE HON'BLE SRI JUSTICE B.SESHASAYANA REDDY

WRIT PETITION No. 16585 of 2004

Between:

1. The Union of India, rep.by its General Manager, South Central Railway, Secunderabad.
2. The Chief Administrative officer, Construction, S.C.Railway, Secunderabad.
3. The Dy.Chief Engineer, (Construction),S.W.Railway, Keshwapur, Hubli.

..... PETITIONERS

AND

1. T.Srinivasa Rao, Railway Contractor, plot NO.109, Hanumanpet Extn. Malkajgiri, Hyderabad.
2. Sri Justice S.Parvatha Rao, Retd.Judge, High of A.P.,Hyderabad, Sole Arbitrator, Plot No.68, phase 111, Rd.No.71, Jubilee Hills, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to pass appropriate order or orders, more particular in the nature Writ of Mandamus or any other directions, thereby setting aside the order passed by the Learned single Judge in Application No.63 of 2003 dated 5-1-2004, thereby appointing the 2nd respondent as sole Arbitrator.

Counsel for the Petitioners: Mr. GOURI SHANKAR SANGHI

Counsel for the Respondent No.1: Mr.A.Ramalingeswara Rao

Counsel for Respondent No.2: None appeared.

The Court made the following :

ORAL ORDER:

(per The Honourable Sri Devinder Gupta, the Chief Justice)

We have heard the learned counsel for the petitioners.

The order passed by the learned Single Judge of allowing an application under Section 11(6) of the Arbitration and Conciliation Act, 1996, as a nominee of the Chief Justice, is questioned by the petitioners in this Writ Petition on the ground that as per clause 63 of the General Conditions of Contract, the matter was an excepted matter, for which claim had been raised by the respondent, and, therefore, was not arbitrable. According to him, clause 43 (2) of the General Conditions of Contract says that on signing of No Claim Certificate by the contractor, he is not entitled to make any claim whatsoever thereafter.

In the counter affidavit filed by the petitioners to the application of the respondent, such a plea was not taken by them. Neither it was alleged nor was proved before the learned Single Judge that the Contractor had signed No Claim Certificate. Therefore, the bar contained in clause 63 would not apply. It was also urged that the contractor failed to follow the procedure laid down in clauses 63 and 64 and that the Railways has not declined or refused to appoint the Arbitrator. Therefore, the order of appointment of a retired Judge of this Court is bad in law. Even this submission has no force, as no objection was raised before the learned Single Judge. As per the averments made in the petition, according to the contractor, during execution of works certain new claims arose for settlement, which were not settled in spite of the issuance of notice dated 12.12.2001. Final bill was submitted in February, 2002. When, despite notice, no action was taken, final notice was issued on 28.6.2002 calling upon the Railways to appoint Arbitrator. When there was no response from Railways, there was no option left to the contractor, but to file a petition seeking appointment of Arbitrator. Admittedly, in the notice dated 28.6.2002, final bill was stated to have been paid in March, 2002. On 28.6.2002, notice was served. Learned counsel for Railways contended that contractor could seek appointment of arbitrator

within 90 days from the date of payment of the final bill, and, therefore, the application seeking appointment of arbitrator was bad. Even such a plea was not taken before the learned Single Judge. In the absence of any date of payment of final bill, it must be presumed to be on the last date of the month of March, 2002, and, in case last date of March, 2002 is taken to be the date of payment of final bill, obviously, notice was served within 90 days from that date. We find no force in the Writ Petition, and, therefore, the same is dismissed. No costs.

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DEVINDER GUPTA, C.J.

23.12.2004.

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B.SESHASAYANA REDDY, J.

VR.

To

1. The General Manager, South Central Railway, Union of India, Secunderabad.
2. The Chief Administrative officer, Construction, S.C.Railway, Secunderabad.
3. The Dy.Chief Engineer, (Construction),S.W.Railway, Keshwapur, Hubli.

4. Sri Justice S.Parvatha Rao, Retd.Judge, High of A.P.,Hyderabad, Sole Arbitrator, Plot No.68, Phase 111, Rd.No.71, Jubilee Hills, Hyderabad.

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